

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:20-CV-161-FL

GREAT AMERICAN EMU COMPANY,
LLC doing business as AEC Consumer
Products,

Plaintiff,

v.


THE E.J. MCKERNAN CO. doing business
as McKernan Packaging Clearing House,

Defendant.

ORDER

This matter is before the court on plaintiff's motion to voluntarily dismiss pursuant to Federal Rule of Civil Procedure 41(a)(2) (DE 36) and defendant's motion for summary judgment (DE 43). Rule 41(a)(2) permits an action to be dismissed at the plaintiff's request "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Here, upon consideration of the totality of the circumstances, including the nature of the claims remaining and the procedural posture of the case, the court finds that dismissal must be with prejudice and with an award of taxable costs to defendant. There are no exceptional circumstances that support an award of attorney's fees. Therefore, plaintiff's motion is GRANTED on the terms set forth herein, and this action is DISMISSED WITH PREJUDICE. Defendant's motion is DENIED AS MOOT. The court awards defendant taxable costs under 28 U.S.C. § 1920. Defendant is DIRECTED to file a bill of costs, within 14 days of the date of this order, which upon allowance by the clerk shall be included in the court's judgment of dismissal.

SO ORDERED, this the 18th day of April, 2022.



LOUISE W. FLANAGAN
United States District Judge